

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

TONY LAMAR PINKARD, SR.,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.: 3:07-CV-70-MEF
)
CRAIG DAVIDSON,)
)
Defendant.)

MOTION TO SUBSTITUTE

COMES NOW Defendant Captain Craig Davidson (hereafter, the “Defendant”), and moves this Honorable Court to permit him to substitute the attached Exhibit “D,” which has been duly executed, for the unexecuted Exhibit “D” attached to the Defendant’s Special Report filed on March 5, 2007.

Respectfully submitted on this the 7th day of March, 2007.

s/Scott W. Gosnell
SCOTT W. GOSNELL, Bar Number: GOS002
Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on this the 7th day of March, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and served the following by U.S. Mail:

Tony Lamar Pinkard, Sr.
Lee County Detention Facility
P.O. Box 2407
Opelika, Alabama 36801

s/Scott W. Gosnell
OF COUNSEL

EXHIBIT D

Affidavit of Matthew Fendley

03-02-'07 12:28 FROM-Webb Eley P.C.

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TONY LAMAR PINKARD, SR.,)
Plaintiff,)
v.) CIVIL ACTION NO.: 3:07-CV-70-MEF
CRAIG DAVIDSON,)
Defendants.)

AFFIDAVIT OF MATTHEW FENDLEY

STATE OF ALABAMA)
COUNTY OF RANDOLPH)

1. My name is Matthew Fendley. I am over the age of nineteen and am competent to execute this Affidavit, which is based on my personal knowledge, training and experience.

2. I am a correctional officer of the Randolph County Jail, Randolph County, Alabama, and was a correctional officer at all times relevant to Plaintiff's Complaint.

3. I have reviewed the Plaintiff's Complaint filed in this matter. I have some personal knowledge of the facts stated in the Complaint.

4. It is the policy of the Randolph County Sheriff's Department that members of the Jail staff receive and answer inmate grievances. Forms on which grievances may be relayed to the Jail staff are readily available in the Jail. Inmates are furnished these forms at any time they request one. An exception exists for requests of an emergency nature, which may be made orally. Grievances are given to Captain Davidson or to the Jail Administrator, Shirley Johnson. Any decisions of Captain Davidson or the Jail Administrator can be appealed to the Randolph

County Sheriff. Copies of all completed grievances and request forms are placed in an inmate's Jail file.

5. Inmates are made aware of the grievance procedure.

6. To not provide an inmate with a grievance form or address a grievance would be a violation of the policy of this Jail.

7. To my knowledge the Plaintiff has not filed a grievance with respect to any of the allegations in his lawsuit.

8. Jail personnel are occasionally required to use physical force in the performance of their duties in order to ensure the orderly administration of the Jail and the safety of Jail staff and inmates. However, the Randolph County Jail has a policy forbidding the use of excessive force in pursuit of those goals. It would be a violation of Jail policy for Jail personnel to use excessive or unnecessary force directed towards an inmate.

9. On or about January 9, 2007, I accompanied Captain Craig Davidson to move the Plaintiff from his current cell to a holding cell. When the Plaintiff was notified that he was being moved to a holding cell, he refused to comply and was verbally abusive and argumentative. I witnessed and heard Captain Davidson warn the Plaintiff three (3) times that he must comply with his directions and, should he continue to refuse, that he would be sprayed with chemical spray. Nevertheless, the Plaintiff continued to refuse to comply with his directions to exit his cell block and accompany us to a holding cell, and continued to curse and argue. I then witnessed Captain Davidson spray the Plaintiff with chemical spray, which enabled us to handcuff him.

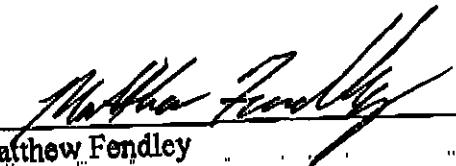
10. Jail policy requires that any inmate who is subject to chemical spray be "decontaminated" as soon as reasonably possible. I witnessed Captain Davidson escort the

Plaintiff to an outside Jail yard for decontamination. The Plaintiff was then escorted to a holding cell.

11. The force used in the aforementioned incident was restricted to the minimum force necessary to remove the Plaintiff from his cell. Though the Plaintiff was verbally belligerent and physically abusive, at no time was the Plaintiff struck, kicked, or otherwise assaulted by myself or any other correctional officer. The Plaintiff was not injured in any way during the incident. Jail records reveal no medical assistance or request for medical assistance related to this incident.

12. There is one video camera in the Jail that would monitor the Plaintiff's cell block and cell. However, that camera is for monitoring purposes only, and does not record.

13. I affirm, to the best of my present knowledge and information, that the above statements are true, that I am competent to make this Affidavit, and that the above statements were made by drawing from my personal knowledge of the situation.


Matthew Fendley

SWORN TO and SUBSCRIBED before me this 10th day of March, 2007.


Casey Edamson
NOTARY PUBLIC

My Commission Expires: 9-22-2009

